

PROPOSAL TO AMEND PROCESS FOR JUDICIAL OBJECTIONS TO LIFER PAROLES

Citizens Alliance on Prisons and Public Spending
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Michigan prisons house about 850 parolable lifers who are currently eligible for release. About 700 were sentenced for crimes committed before October 1, 1992, and were eligible for release after serving 10 calendar years. Hundreds have now served 25, 35, even 45 years -- decades longer, in most cases, than sentencing judges intended. The remaining 150, whose crimes occurred after October 1, 1992, became eligible for parole after serving 15 years.

Although the parole board has been willing to release more lifers in recent years, a substantial proportion of lifer paroles are being stopped by judicial objections. No matter how much time the person has served, how good a candidate he or she is for release, what the original judge's intentions were or how carefully the parole board has considered the case, parole can be prevented by a single successor judge who simply writes a note containing two words: "I object."

PROBLEM

Under Michigan's "Lifer Law" (MCL 791.234) there are three procedural requirements for granting parole:

- The parole board must conduct a public hearing.
- The parole period must be at least four years.
- The sentencing or successor judge must have an opportunity to object.

If the judge objects in writing within 30 days the parole board loses jurisdiction to grant parole and the scheduled public hearing is canceled. The judge does not have to state any reason for objecting and the decision is not subject to appellate review.

This statutory power has resulted in a substantial proportion of objections from successor judges. Of the 171 public hearings scheduled for non-drug lifers from January 2007 through December 2012, 41 (24%), were cancelled because of judicial objections. The majority of objections were based on the offense or its effect on the victim, not on current information about the prisoner. At least 12 gave no reason at all. Six of the objections were in cases where the board's interest in proceeding was based on medical problems that left the prisoner wholly incapacitated. Nearly all the objections were by a successor judge.

Currently, a lifer whose release is vetoed has only two options. One is to apply for commutation. The other is to wait to be reconsidered in another five years. He or she must then hope that the objecting judge has relented or left the bench, that the parole board, whose membership may have changed substantially, will still be interested in proceeding and that any new successor judge will permit release.

PROPOSAL

Amend MCL 791.234(8)(c) to eliminate the authority of successor judges to prevent the parole board from releasing a parolable lifer. This would still permit successor judges to have their input considered by the parole board but would no longer allow them to exercise veto power.

RATIONALE

When it was adopted in 1941, the lifer objection process applied only to the actual sentencing judge. For reasons now unknown, it was extended to successor judges in 1953. It has not been reconsidered in nearly 60 years. There were relatively few parolable lifers in the early fifties and they served far fewer years. No one could have anticipated the consequences the veto power is having now.

- The objection process puts successor judges in a difficult position. They receive a limited amount of information from the parole board and may be contacted by victims, victims' family members or the prosecutor. But they have no basis for making an independent judgment and may have no way of knowing what the original sentencing judge intended.
- When the parole board conducts a public hearing, it examines the prisoner closely and allows those who support and oppose release to present their positions under oath. Ironically, judges who have never seen the prisoner or heard a balanced presentation of the facts are allowed to circumvent this fair and open process without providing a rationale that addresses the prisoner's current threat to public safety or, in some cases, any rationale at all.
- Although it has the effect of lengthening the prisoner's incarceration, the objection process has none of the procedural protections that are a routine part of sentencing, including an opportunity for appellate review.
- Objections by successor judges are totally out of sync with current notions of due process. They foster a lack of uniformity in punishment, causing people with similar histories, similar crimes and similar institutional records to serve disparate prison terms.
- Because lifers are an aging population with increasing health problems and they are reviewed only every five years, each veto decision costs taxpayers about \$200,000,

Eliminating the veto power of successor judges would not dictate the result in any particular case. In every case, successor judges, prosecutors and victims would still be able to have their opposition to release considered by the parole board.